LIBRARY
SUPREME COURT, U.S.

454

Office - Supreme Court, U.S.
FILED
SEP 12 1957
JOHN T. PEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

JACK GREEN AND GENERAL LABORERS' LOCAL No. 397 OF GRANITE CITY, ILLINOIS, *Petitioners*,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

EDWARD BENNETT WILLIAMS,
AGNES A. NEILL,
1000 Hill Building
Washington 6, D. C.

FRED P. SCHUMAN,
1308 Niedringhaus Avenue
Granite City, Illinois

SCHAEFER O'NEILL,
Alton Banking & Trust Building
Alton, Illinois

WILLIAM P. ROBERTS,
504 East Monroe Street
Springfield, Illinois
Counsel for Petitioners

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	4
Reasons for Granting the Writ	10
Conclusion	20
Appendix:	
Opinion	1a
Judgments	10a

CITATIONS

Cases:

Bianchi v. United States, 219 F. 2d 182, cert. denied, 349 U.S. 915 15

Callanan v. United States, 223 F. 2d 171, cert. denied, 350 U.S. 862 15

Hulahan v. United States, 214 F. 2d 441, cert. denied, 348 U.S. 856 15

Morissette v. United States, 342 U.S. 246 ..... 18, 19

United States v. Kemble, 198 F. 2d 889, cert. denied, 344 U.S. 893 ..... 16, 17

United States v. Local 807, 315 U.S. 521 ..... 10, 12

United States v. Masiello, 235 F. 2d 279, cert. denied, 352 U.S. 882 12

United States v. Postma, 242 F. 2d 488 12

United States v. Varlack, 225 F. 2d 665 12

Page

STATUTES:

18 U.S.C. § 1951 ..... 1, 2, 4, 8, 10, 12, 14, 15, 16, 17, 19
18 U.S.C. § 3731 8
28 U.S.C. § 1254 2
Act of June 18, 1934, c. 569, § 2, 48 Stat. 979 ..... 3, 10

MISCELLANEOUS:

S. 2347, 77th Cong., 2d Sess. 12
H.R. 6872, 77th Cong., 2d Sess. 12
H.R. 7067, 77th Cong., 2d Sess. 12
H.R. 653, 78th Cong., 1st Sess. 12
H.R. 32, 79th Cong., 1st Sess. 12
H.Rept. 238, 79th Cong., 1st Sess. 12
Rule 52, Federal Rules of Criminal Procedure 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, *Petitioners*,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming their convictions for violation of the Hobbs Act, 18 U.S.C. § 1951.

OPINIONS BELOW

The opinion of the District Court granting petitioners' motion in arrest of judgment is reported at 135 F.Supp. 162. The opinion of this Court reversing the

order of the District Court is reported at 350 U.S. 415. The opinion of the District Court upon remand is reported at 143 F.Supp. 442. The opinion of the Court of Appeals affirming petitioners' convictions (App. 1a) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 9, 1957 (App. 10a-11a). A petition for rehearing was denied on August 13, 1957 (App. 12a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

QUESTIONS PRESENTED

1. Whether the Hobbs Act, 18 U.S.C. § 1951, prohibits attempts by organized labor to secure genuine employment for union members in an industry affecting commerce by means of actual or threatened force, violence, or fear.

2. Whether a specific intent to rob or extort is essential to conviction under the Hobbs Act, 18 U.S.C. § 1951.

STATUTES INVOLVED

18 U.S.C. § 1951 provides:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

The Act of June 18, 1934, c. 569, § 2, 48 Stat. 979, provides:

Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.

STATEMENT

Petitioners were indicted, tried, and convicted in the United States District Court for the Southern District of Illinois, Southern Division, under an indictment charging violations of the Hobbs Act, 18 U.S.C. § 1951. This statute interdicts actual or attempted obstruction of interstate commerce by robbery or extortion.

The first count of the indictment alleged that petitioners attempted to obstruct interstate commerce by means of extortion, in that they attempted to obtain from one Terry money "in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers" by means of actual and threatened force, violence, and

fear (R. 7-8). The second count alleged a similar attempt to obtain wages from one Wright (R. 8-9). The fourth count alleged that petitioners committed and threatened physical violence to the person of one Luhning, an employee of Wright, and the ninth count alleged a conspiracy to commit the offenses alleged in the preceding counts (R. 10-11, 14-15). The other counts of the indictment were withdrawn by the government at trial (R. 924).

The evidence, viewed in the light most favorable to the government, tended to show the following facts. Petitioner Local 397 is an affiliate of the International Hod Carriers' Building and Common Laborers' Union of America (R. 111-112). It had 150 to 170 members and it also had jurisdiction over approximately 1100 members of other affiliated locals working in Madison County, Illinois (R. 812). Petitioner Green was a business agent for Local 397 (R. 810).

Arthur W. Terry of St. Louis, Missouri, and Ralph Wright of St. Clair County, Illinois, entered into contracts with the United States Army Corps of Engineers to furnish bulldozers and tractor-scraper units, together with operating personnel, for the purpose of repairing a flood control levee in Madison County, Illinois (R. 129-130, 219). This levee was adjacent to the Chain of Rocks Canal, which had been constructed to overcome certain navigational difficulties in the Mississippi River (R. 72). Both Terry and Wright undertook to perform their contracts without the services of a common laborer generally known as a "swamper."

A swamper tends heavy earth moving equipment. He guides the progress of the machine, cleans it, sup-

plies it with gasoline, oil, and water, and attaches it to other equipment when necessary. The employment of swampers was customary in Madison County (R. 172-173, 191, 494, 514, 611-612, 675-676, 709, 800). Other contractors who worked on the Chain of Rocks project employed swampers, and the government employed a swamper to work with one of Wright's machines which it rented in January and February of 1953 (R. 138-139, 680, 696). Local 397 had a contract with the Southern Illinois Builders Association which provided for the employment of swampers wherever heavy earth moving equipment was in use, but neither Terry nor Wright belonged to the Association (R. 670-676).

On March 23, 1953, petitioner Green visited Wright's work site and asked the operator where his swamper was (R. 120-121). Thereafter, on March 26, six unidentified men approached Wright's operator and requested him to park his unit, which he did (R. 12[illegible]). That evening Wright contacted petitioner Green and stated that he had never used a laborer on maintenance work for the government, that he saw no need for one, and that he would move his equipment out if he had to have one (R. 135-136). Petitioner Green said "that was the thing to do," whereupon Wright abandoned performance of his contract (R. 136).

On March 26, six men arrived at Terry's work site and asked his operators to stop work, because there was a dispute which they wanted to have settled, namely, Terry's failure to employ swampers (R. 168-169, 186-187). Thereafter Terry was directed by the government to resume performance of his contract (R. 258). He hired two armed bodyguards and requested the sheriff to be present (R. 226-227, 258-259). On the

morning of April 13, he telephoned petitioner Green and stated that he was resuming operations without a swamper (R. 231). Petitioner Green replied that he would stop Terry from operating without swampers, but he did not specify how he proposed to do so (R. 231).

Petitioner Green proceeded to Terry's work site alone but withdrew when he heard about the armed guards (R. 843). Subsequently a group of men who belonged to Local 397 or were under its jurisdiction assembled on the levee (R. 237). Most of the witnesses testified that there were several hundred men present, although Terry estimated fifteen hundred "just to pick a figure out of the air" (R. 236). Petitioner Green meanwhile returned to the scene (R. 237). Some of the men gathered around the only machine in operation and told the operator to alight, which he did (R. 214-215). Harsh language was employed by petitioner Green and some of the men, but no actual violence occurred (R. 239-240). With the sheriff acting as an intermediary, Green and Terry agreed to withdraw and leave the controversy to "court settlement" (R. 542-544). The work was finished by another contractor who employed swampers (R. 438, 609).

The trial judge instructed the jury that they should return a verdict of guilty if they found that a swamper was "an unnecessary party" (R. 1018). He further instructed them that the government had the burden of proving beyond a reasonable doubt that petitioners attempted to force Terry and Wright to employ "unwanted, superfluous, fictitious or unnecessary laborers" (R. 1020). In response to a request by the government, he also instructed them that "you don't have

to make up your minds right when it is being done, have the intent of it, but if an act performed would result in a certain condition, then intent may be presumed" (R. 1021). The jury returned verdicts of guilty against both petitioners under counts one and two and verdicts of not guilty under counts four and nine (R. 1029).

The trial judge then denied petitioners' motions for judgments of acquittal and for a new trial but granted their motion in arrest of judgment, on the ground that the indictment failed to state an offense (R. 1045-1046). It was his view that the Hobbs Act covers only the taking of property for the extorter's personal benefit (R. 1043-1044). His opinion went on to conclude:

> "For this Court now to say that when a labor organization or officer of said organization advocated and demanded the employment of labor, which had been customary and agreed to by contractors and laborers in this Community, was a violation of this particular Act appears to me to be unreasonable.
>
> ". . . I conclude that the trouble in this Community and on this particular job was caused by a disagreement between the contractor and labor, and was in no wise an attempt to extort for the use of either the Union or the Defendant Green, any money or property of the contractor."

The government took a direct appeal to this Court under 18 U.S.C. § 3731 and secured a reversal by a divided bench. 350 U.S. 415. The majority concluded that the indictment stated an offense, rejecting the trial judge's view that the Hobbs Act is limited to cases where the defendant obtains property for his own benefit. It pointed out that the record did not

contain the evidence upon which the court acted and that it was passing only on the allegations of the indictment.

The Chief Justice, Mr. Justice Douglas, and Mr. Justice Black dissented, on the ground that the judgment of the District Court was based in part upon the insufficiency of the evidence to sustain conviction and hence that it was not subject to direct appeal. The dissenting opinion concluded that the trial judge "considered facts not alleged in the indictment, e.g., that contractors in the community had customarily agreed to the employment of labor which allegedly was demanded by appellees, and that the trouble on the particular job was caused by a disagreement between the contractor and labor, not by an attempt to extort." 350 U.S. at 421.

Since the trial judge died pending appeal, the case was assigned to another judge for sentencing. Petitioner Green was fined $3,000.00 and placed on probation for three years, during which period he may not serve in any official position with any union (R. 1069-1071). Petitioner Local 397 was fined $3,000.00 (R. 1072).

Petitioners then appealed to the United States Court of Appeals for the Seventh Circuit. Their principal argument was the insufficiency of the evidence to establish attempted extortion. The Court of Appeals rejected this argument, stating (App. 6a-7a):

> "After a careful examination of the record, we conclude that there is ample evidence of conduct which could reasonably be found to constitute threats of force and violence in an attempt to instill fear into the employers in order to coerce them into hiring the unwanted labor. . . .

". . . The record discloses overt conduct which reasonably constituted threat of physical violence, which admittedly was designed to force the contractors to hire unnecessary laborers."

REASONS FOR GRANTING THE WRIT

1. This case presents an important question left unanswered by the prior decision of this Court herein, namely, whether the Hobbs Act interdicts attempts to achieve the status of a bona fide employee by means of actual or threatened force, violence, or fear. The affirmative answer of the court below to this question is completely at war with the legislative history of the Hobbs Act. It poses a serious threat, moreover, to the legitimate activities of organized labor. Its obvious significance in the administration of the Hobbs Act compels review by this Court.

A. The question presented by this case had its origin in the case of *United States* v. *Local 807*, 315 U.S. 521. There members of the International Brotherhood of Teamsters stopped trucks coming into New York City and used violence and threats to compel the owners to pay $9.42 for each large truck and $8.41 for each small truck entering the city. These amounts represented the union wage scale for a day's work of driving and unloading. In some cases the union members drove the truck into the city and unloaded it in return for the payment. In others cases they performed no services whatsoever in return for the money, either because they refused to do so or because the truck owners refused to accept their services.

Prosecution was instituted under the predecessor to the Hobbs Act, which contained an exception for "the payment of wages by a bona-fide employer to a bona-fide employee." Act of June 18, 1934, c. 569, §§ 1-6,

48 Stat. 979. The government conceded that this statute did not cover persons who performed services in return for the money paid. It conceded that persons "who use coercion to secure genuine employment are engaged in a legitimate labor objective; their activities, although perhaps constituting breaches of the peace, do not partake of the nature of extortion." 315 U.S. at 522. Both the Court of Appeals and this Court agreed that the defendants could not be guilty if they honestly sought to obtain an opportunity to work for a wage. The "difficult issue" which divided both courts was whether they were guilty if they intended to compel payments regardless of whether their services were accepted or rejected by the employers. 315 U.S. at 534.

In an opinion by Mr. Justice Byrnes, this Court held that the statutory exemption of "wages" covered cases of this character. Chief Justice Stone, dissenting, argued that money paid for services which were rejected could not be characterized as "wages," and hence that an attempt to secure payment for rejected services by means of violence was a crime. He agreed with the majority and with the government, however, that the statute did not punish an attempt to secure genuine employment by coercive means. His opinion states, 315 U.S. at 541:

> "*Even though the procuring of jobs by violence is not within the Act,* and though this includes the 'stand-by' job where no actual service is rendered, the granted immunity, unless its words be disregarded, does not extend to the case where the immediate objective is to force the payment of money regardless of the victim's willingness to accept and treat the extortioner as an employee." (Emphasis added.)

The majority opinion in this case raised a storm of controversy, and numerous bills were introduced to amend the statute. S. 2347, 77th Cong., 2d sess.; H.R. 6872, 77th Cong., 2d sess.; H.R. 7067, 77th Cong., 2d sess.; H.R. 653, 78th Cong., 1st sess.; H.R. 32, 79th Cong., 1st sess. H.R. 32 was enacted into law in 1946 and is generally known as the Hobbs Act. The committee report on this bill in the House reprinted the *Local 807* decision in full and made it clear that the purpose of the bill was to adopt the views of the Chief Justice. H.Rept. 238, 79th Cong., 1st sess. While a few individual members of the House indicated a desire to use this bill as a "right to work" law, the debate as a whole makes it clear that Congress was seeking only to adopt the position advocated by the government and the Chief Justice. 91 Cong. Rec. 11899-11922. The Solicitor General so conceded at page 18 of his brief on the merits when the case at bar was here on direct appeal. There is no reason to suppose that Congress intended to go further than the government of the Chief Justice and condemn attempts to secure genuine employment by coercive means.

The court below, however, has done precisely what Congress refrained from doing. The indictment in this case charged that petitioners sought to compel the payment of wages for "imposed, unwanted, superfluous and fictitious services" by means of actual and threatened force, violence, and fear. This Court has held that these allegations make out an offense under the statute. It relied upon the enactment of H.R. 32 as demonstrating a legislative intent to outlaw coerced payment of wages for services which were never to be performed, *i.e.*, services which were imposed, unwanted, superfluous, *and fictitious*. It pointed out that

it could not determine the sufficiency of the evidence to sustain these allegations upon direct appeal. 350 U.S. at 421.

Concededly the evidence does not support the allegation that the services in question were fictitious. Concededly petitioners sought only to compel the contractors to employ union members in accordance with the prevailing custom in the area. Other contractors in the area employed swampers to perform certain tasks, and petitioners clearly contemplated that any swampers employed as a result of their demands would perform such tasks in return for the customary wage.

Both the trial judge and the Court of Appeals recognized that this case did not involve fictitious services. The trial judge told the jury that the issue was whether the swampers were "unnecessary," and that they could convict if they found that the swampers were "unwanted, superfluous, fictitious *or* unnecessary" (R. 1018, 1020). In his opinion, he recognized that the services of a swamper were customary in the area (R. 1044). The Court of Appeals affirmed because it found that swampers were "unwanted" and "unnecessary" (App. 6a-7a). It did not and could not find that petitioners sought to compel the payment of wages for fictitious services, because the evidence was all the other way.

Of course, a finding that swampers were "unnecessary" is not tantamount to a finding that the services of swampers are "fictitious." Petitioners have never suggested that swampers are necessary. The services customarily performed by swampers can be and in this case were performed by the operators of the machines. Since these operators earn a much higher

hourly wage than common laborers, however, petitioners contend that it is more efficient and economical to employ swampers. Contractors such as Wright and Terry, on the other hand, who are renting their machines and operators on an hourly basis, may find it more lucrative to have the operators perform the services in question.

The court below has thus held that it is a felony to attempt to secure genuine employment by coercive means. This Court has held that the predecessor of the Hobbs Act did not cover such cases. The legislative history of the Hobbs Act makes it clear that Congress did not intend to alter pre-existing law in this respect. Petitioners have consequently been convicted of an offense created by the Court of Appeals, and not by Congress.

B. The decision of the court below poses a serious threat to the rights of organized labor. A concededly legitimate objective of all unions is to secure employment for union members. No one condones the use of physical violence to attain this objective. The history of the trade union movement, however, demonstrates that labor disputes are often attended by some threats or actual violence. Certainly a simple breach of the peace should not become one of the most serious felonies in the federal criminal code merely because the perpetrator is a union member engaged in a labor dispute which involves the employment of union members to perform certain services. Any such construction of the Hobbs Act would be particularly unjust in view of the fact that a similar assault or threat by an agent of the employer constitutes a simple misdemeanor punishable under state law.

Subsection (c) of the Hobbs Act strongly suggests that Congress did not intend any such result. This section provides that the statute shall not be construed to repeal, modify, or affect the Norris-LaGuardia Act or the National Labor Relations Act. It is only reasonable to suppose, therefore, that conduct which is permitted and protected under these acts does not violate the Hobbs Act merely because it is coupled with a breach of the peace.

An even more serious objection to the decision of the court below stems from the fact that the Hobbs Act has been construed to condemn attempts to obtain property by fear of economic loss. The courts of appeals have held that an attempt to obtain money for the personal aggrandizement of union officers by threats of labor difficulties is a crime under this statute. See *United States* v. *Postma*, 242 F.2d 488; *United States* v. *Masiello*, 235 F.2d 279, cert. denied *sub nomine Stickel* v. *United States*, 352 U.S. 882; *United States* v. *Varlack*, 225 F.2d 665; *Callanan* v. *United States*, 223 F. 2d 171, cert. denied, 350 U.S. 862; *Bianchi* v. *United States*, 219 F.2d 182, cert. denied, 349 U.S. 915; *Hulahan* v. *United States*, 214 F.2d 441, cert. denied, 348 U.S. 856.

Here again, no responsible union official condones such conduct. When the holding of these decisions is combined with the holding of the court below in this case, however, the result is a mortal blow to organized labor. In this case, the Seventh Circuit has held that an attempt to secure genuine employment for union members by means of "actual or threatened force, violence, or fear" is a crime. In the cases cited above, other circuits have held that fear of economic loss is "fear" within the meaning of the Hobbs Act. When

these two legal propositions are combined, it becomes a crime to attempt to secure genuine employment for union members by means of economic coercion, *i.e.*, strikes or threats of strikes. Thus one of the oldest and most legitimate weapons of organized labor becomes a crime if used for one of the oldest and most legitimate objectives of organized labor.

It may be suggested that the statute punishes only the "unlawful" use of force, violence, or fear, and hence that it does not cover strikes for legitimate objectives. The court below, however, has held at least by implication that an attempt to compel an employer to hire an unwanted laborer is not a legitimate objective. Moreover, any strike which would constitute an unfair labor practice or a breach of a collective bargaining agreement is "unlawful," at least in a certain sense. Should threats of such an "unlawful" strike become a felony merely because one of its objectives is to secure employment for union members? These serious questions urgently require consideration by this Court.

C. The only prior case remotely in point is *United States* v. *Kemble*, 198 F.2d 889, cert. denied, 344 U.S. 893. This was a four to three decision of the Third Circuit affirming a conviction under the Hobbs Act. Defendant in this case employed actual and threatened violence to compel a non-union truck driver to pay $10.00, described as a day's wages, for a union member to unload his truck after the bulk of the unloading had already been accomplished by the driver himself. The *Kemble* case is plainly distinguishable from the case at bar in that Kemble was demanding a day's wage *after* the day's work had been substantially accomplished by the non-union driver. In other words, Kemble was

demanding money for largely fictitious services. Here, on the other hand, the record is clear that petitioners sought only to compel the employment of swampers who would do a customary day's work for a customary day's wage. So far as the record shows, the amount of the wage was never discussed, and petitioners never demanded the payment of any fixed sum.

Furthermore, the petition for certiorari in the *Kemble* case did not adequately present the arguments relied upon by petitioners herein. It did not, for example, discuss whether the Hobbs Act was intended to prohibit attempts to secure genuine employment by means of economic coercion, perhaps because it antedated the decisions holding that fear of economic loss is sufficient under this statute. These petitioners consequently urge that the denial of certiorari in *Kemble* should not in any way influence the disposition of their petition.

II. Concededly the Hobbs Act condemns only interference with commerce by means of robbery or extortion. The offense charged in this case, therefore, is not interference with commerce by means of actual or threatened force, violence, or fear, but rather interference with commerce by means of extortion.

Concededly also extortion, like all larcenous offenses, is a crime of specific intent. The existence of such intent is plainly a question for the jury. The trial court in this case, however, told the jury that specific intent was unnecessary. The Court of Appeals compounded this error by holding that a "general intent" is sufficient under the Hobbs Act (App. 7a).

At the conclusion of the court's charge to the jury, the following supplementary instruction was given (R. 1021):

"The Court: It has been suggested to me that perhaps I did not make myself clear on the question of intent.

"Any person may be supposed to intend—intend the reasonable and probable consequences of an act performed. That is, you don't have to make up your minds right when it is being done, have the intent of it, but if an act performed would result in a certain condition, then intent may be presumed."

Of course, this instruction was egregiously erroneous under the decision of this Court in *Morissette* v. *United States*, 342 U.S. 246. There the defendant was convicted of stealing government bomb casings. His defense was that he thought they had been abandoned by the government. The trial court told the jury, however, that the question was whether he intended to take the property, and that intent would be presumed from the act of taking.

This Court unanimously reversed, on the ground that the existence of a specific criminal intent is a jury question in larcenous offenses and that the existence of such intent cannot be presumed from the mere act of taking. Mr. Justice Jackson, speaking for the Court, stated, 342 U.S. at 274:

"Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury. State court authorities cited to the effect that intent is relevant in larcenous crimes are equally emphatic and uniform that it is a jury issue.

. . . . .

"It follows that the trial court may not withdraw or prejudge the issue by instruction that

the law raises a presumption of intent from an act."

The trial judge in this case did precisely what this Court forbade in the *Morissette* case. In both cases, the trial judge told the jury that a specific criminal intent was unnecessary. In both cases, the judge went on to tell the jury that intent would be presumed from the defendant's act. In both cases, therefore, the judge withdrew from the jury's consideration an essential element of the offense, namely, *mens rea*.

Such prejudgment was particularly prejudicial here, because the weight of the evidence was to the effect that the employment of swampers was customary and that their services were considered valuable. Under proper instructions, therefore, the jury might well have concluded that petitioners did not intend to compel the payment of wages for "imposed, unwanted, superfluous and fictitious services." While no objection was taken at trial to this instruction, it obviously constitutes plain error which this Court can and should notice *sua sponte*. Rule 52, Federal Rules of Criminal Procedure.

Moreover, petitioners urged in the Court of Appeals that there was no evidence of a specific intent to extort, and the Court of Appeals held that a "general intent" was sufficient under *Morissette*. This distortion of the *Morissette* holding served only to compound the error in the trial court's charge. It underscores the necessity for a determination by this Court on the question of *mens rea* in Hobbs Act cases.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

EDWARD BENNETT WILLIAMS,
FRED P. SCHUMAN,
SCHAEFER O'NEILL,
WILLIAM P. ROBERTS,
AGNES A. NEILL,
Counsel for Petitioners.

September, 1957.